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VIA ECF

December 1, 2020

Honorable Mark Falk, CUSMJ
United States District Court
Martin Luther King Jr. Courthouse
50 Walnut Street
Newark NJ 07102

RE: Discover Growth Fund, LLC v. Fiorino, et al.,
Civil Action No. 2:20-cv-00351 (CCC)(MF)

Dear Chief Magistrate Judge Falk:

We are counsel to Discover Growth Fund, LLC, the plaintiff in the captioned action ("Discover"). We write respectfully to request that Your Honor grant a 30 day extension to effect service of process based on good cause and to direct the Clerk of the Court to issue a summons to the "Special Administrator" of the decedent estate of one of the defendants, as identified below.

We filed the initial Complaint in this action on January 9, 2020 [ECF No.1]. Thereafter, we learned that one of the defendants, Gary H. Rabin, was deceased on or about December 31, 2019. Accordingly, on January 30, 2020, we filed the Amended Complaint [ECF No. 4], substituting the Estate of Gary H. Rabin ("Rabin Estate") for Mr. Rabin individually as the named defendant. We filed a Corrected Amended Complaint on February 14, 2020 [ECF No. 5] which corrected the date of the filing of the probate petition discussed below. The other named defendants are represented by John E. Jureller, Jr., Esq. of Klestadt Winters Jureller Southard & Stevens, LLP. By Stipulation filed with the Court on March 6, 2020 [ECF No. 9], Mr. Jureller acknowledged and accepted service on behalf of his firm's clients.

Mr. Rabin was a resident of California. Accordingly, in order to obtain the appointment of a Special Administrator under California law so that we could serve the summons and Corrected Amended Complaint upon the Rabin Estate, Discover's California counsel filed a probate petition for the issuance of Letters of Administration of the Rabin Estate on February 4, 2020 in the Superior Court of California, Los Angeles County ("California Court".) On October 23, 2020, the California Court appointed Sheniqua T. Rouse-Pierre, a representative of Discover, as Special Administrator of the Rabin Estate. A copy of the California Court's Order Appointing Special Administrator is enclosed.

Due to the passage of time involved in the California Court's issuance of said Order, we are beyond the 90 day period for serving a summons and complaint upon the Special

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Administrator provided by Fed. R. Civ. P. 4(m). However, we acted diligently and timely in filing the necessary petition and related pleadings with the California Court. The delay comes from the California Court and not as a result of our efforts to effectuate proper service. Thus, we submit that good cause exists to grant our request. Accordingly, we hereby respectfully request that Your Honor So Order this letter (i) granting Discover a 30 day extension to effect service of process upon the Special Administrator and (ii) directing the Clerk to issue a Summons to the Special Administrator in this action.

As always, we appreciate the Court's time and attention to this matter.

Respectfully submitted,



Dale E. Barney
Director

Cc: John E. Jureller, Jr., Esq. (via ECF and email)

SO ORDERED:

(i) Discover is granted an extension of 30 days from the date hereof to effect service of process of a Summons and the Corrected Amended Complaint filed in the captioned action upon Sheniqua T. Rouse-Pierre, Special Administrator of the Estate of Gary H. Rabin.

(ii) The Clerk of the Court is hereby directed to issue a Summons directed to Ms. Rouse-Pierre as Special Administrator, maintaining a business address c/o Discover Growth Fund, LLC, 5330 Yacht Harbor Grande, Suite 206, St. Thomas, VI, 00802-5013, and deliver said Summons to Discover's counsel in the captioned action, Gibbons P.C., attention Dale E. Barney, Esq.

Dated:

Honorable Mark Falk, CUSMJ

Enclosure to Dale E. Barney, Esq. letter to Judge Falk

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): Stephen E. Hyam, Esq. SBN 198065 CLARK & TREVITHICK, PLC 445 S. Figueroa St., 18th Fl. Los Angeles CA 90071		TELEPHONE AND FAX NOS.: 213-629-5700 213-624-9441	FOR COURT USE ONLY
ATTORNEY FOR (Name): Discover Growth Fund, LLC, Petitioner			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES			
STREET ADDRESS: 111 North Hill Street MAILING ADDRESS: Same CITY AND ZIP CODE: Los Angeles, CA 90012 BRANCH NAME: CENTRAL DISTRICT			
ESTATE OF (Name): Gary H. Rabin DECEDENT			
ORDER FOR PROBATE ORDER <input type="checkbox"/> Executor APPOINTING <input type="checkbox"/> Administrator with Will Annexed <input type="checkbox"/> Administrator <input checked="" type="checkbox"/> Special Administrator <input type="checkbox"/> Order Authorizing Independent Administration of Estate <input type="checkbox"/> with full authority <input type="checkbox"/> with limited authority			CASE NUMBER: 20STPB01084
WARNING: THIS APPOINTMENT IS NOT EFFECTIVE UNTIL LETTERS HAVE ISSUED.			

1. Date of hearing: 9/28/2020 Time: 8/30AM Dept./Room: 11 Judge: ~~Barbara R. Johnson~~

THE COURT FINDS

2. a. All notices required by law have been given.
b. Decedent died on (date): December 31, 2019
(1) ☒ a resident of the California county named above.
(2) ☐ a nonresident of California and left an estate in the county named above,
c. Decedent died
(1) ☒ ~~intestate~~
(2) ☐ ~~testate~~ NOT DETERMINED AT THIS TIME

RE

and decedent's will dated:

~~and each codicil dated:~~

was admitted to probate by Minute Order on (date):

THE COURT ORDERS

3. (Name): Sheniqua T. Rouse-Pierre
is appointed **personal representative**:

- a. ☐ executor of the decedent's will
b. ☐ administrator with will annexed
c. ☐ administrator
d. ☒ special administrator
(1) ☐ with general powers
(2) ☒ with special powers as specified in Attachment 3d(2)
(3) ☐ without notice of hearing
(4) ☐ letters will expire on (date):

and letters shall issue on qualification.

4. a. ☐ **Full authority** is granted to administer the estate under the Independent Administration of Estates Act.
b. ☐ **Limited authority** is granted to administer the estate under the Independent Administration of Estates Act (there is no authority, without court supervision, to (1) sell or exchange real property or (2) grant an option to purchase real property or (3) borrow money with the loan secured by an encumbrance upon real property).
5. a. ☒ Bond is not required.
b. ☐ Bond is fixed at: \$ to be furnished by an authorized surety company or as otherwise provided by law.
c. ☐ Deposits of: \$ are ordered to be placed in a blocked account at (specify institution and location):
and receipts shall be filed. No withdrawals shall be made without a court order. ☐ Additional orders in Attachment 5c.
d. ☐ The personal representative is not authorized to take possession of money or any other property without a specific court order.
6. ☐ (Name): is appointed probate referee.

Date:

7. Number of pages attached: 1JUDGE OF THE SUPERIOR COURT
SIGNATURE FOLLOWS LAST ATTACHMENT

Estate of GARY H. RABIN

Case No. 20STPB01084

ATTACHMENT 3d(2) to:

ORDER APPOINTING SPECIAL ADMINISTRATOR

Further Orders of the Court:

1. SHENIQUA T. ROUSE-PIERRE, is appointed Special Administrator of the Estate of Gary H. Rabin for the exclusive and limited purpose of accepting service of the summons and amended complaint in the matter of *Discover Growth Fund, LLC v. Estate of Gary H. Rabin*, and tendering same to Gary H. Rabin's insurance company for defense; and

2. SHENIQUA T. ROUSE-PIERRE, is hereby authorized to accept service of the summons and amended complaint in the matter of *Discover Growth Fund, LLC v. Estate of Gary H. Rabin*, and tendering same to Gary H. Rabin's insurance company for defense.

Date:

October 23, 2020



A handwritten signature in black ink, appearing to read "Michael Small", is written over a horizontal line.

Michael Small
Judge of the Superior Court

RE

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trevithick